

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

Case No.: 16-2008-CA-003856

Division: CV-G

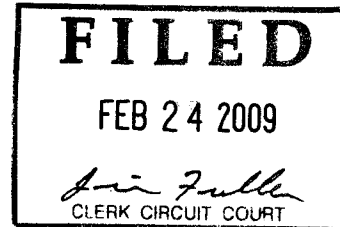
JULIE SAIEG, as Personal Representative
of the Estate of Brittany Hampton, deceased

Plaintiff,

vs.

BOYS HOME ASSOCIATION, INC., a Florida
Corporation, and FAMILY SUPPORT SERVICES
OF NORTH FLORIDA, INC., a Florida
Corporation

Defendants.



BOYS HOME ASSOCIATION, INC.,
a Florida Corporation,

Defendant/Third Party Plaintiff,

vs.

DANIEL MEMORIAL, INC.,
a Florida Non-Profit Corporation,

Third Party Defendant.

**BOYS HOMES' MOTION FOR FINAL SUMMARY
JUDGMENT REGARDING ABSENCE OF IMPACT**

Boys Home Association, Inc. ("BOYS HOME"), by undersigned counsel, moves pursuant to Rule 1.510 for final summary judgment in its favor because the admissible evidence of record shows that neither of the plaintiffs Phyllis Wilson ("WILSON") nor Jeffrey Hampton ("HAMPTON") were involved in a requisite impact or suffered any significant discernable physical or mental injury

sufficient to sustain a negligence action against **BOYS HOME** as a matter of law. The specific grounds and evidence in support of this motion is as follows:

1. This is a wrongful death case in which the plaintiff biological parents of the deceased child, Brittany Hampton ("Brittany") have sued **BOYS HOME** claiming that they were negligent in their duty to recruit, train, monitor and supervise foster parent Qiana Holmes and that such negligence caused the death of Brittany when she drowned in a bathtub on November 17, 2007.

2. Each of the biological parents claim that they have suffered personal injuries as a result of such alleged negligence on the part of **BOYS HOME** and they seek personal injury damages from **BOYS HOME** as a result. In this regard, the Complaint alleges:

"33. As a direct and proximate result of the negligence of the Defendant BHA , Jeffrey Hampton and Phyllis Wilson have suffered, both in the past and will do so in the future, mental pain and suffering."

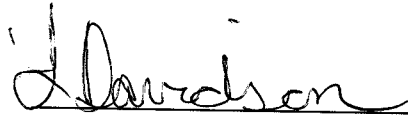
3. The deposition of the biological mother, **WILSON**, was taken on October 14, 2008. At that time, **WILSON** testified that one of the supervisors of Daniel Memorial, Inc., the agency charged with monitoring the foster child while in the home of the foster parent, first contacted her about the death of her child, Brittany, on the date of the incident. **WILSON** was told that one of her children had drowned in the bathtub. **WILSON** testified that she passed out and cried when she was given this information. [Deposition, p. 51] **WILSON** went on to testify that she last had visual contact with Brittany on September 19, 2007, approximately two months before the drowning incident. After she found out about the death of her child, Daniel Memorial offered some grief counseling services to **WILSON** but she decided not to participate in the grief counseling because she "counted on God". [Deposition, p. 56] As such, she met with her pastor for some period of time until she became too busy and "he really helped me out with a lot." [Deposition, p 56]. That is the extent of her injury, care and treatment for mental anguish/distress as related to this case.

4. The biological father, **HAMPTON**, testified that he was first contacted about the death of Brittany by Adam Olsen about a week later when one of the employees of Daniel Memorial, who came to his job and volunteered to take him to see his children. Mr. Olsen then told **HAMPTON** that his daughter had drowned the Friday before. [Deposition, pages 25 and 26]. **HAMPTON** testified further that it was hurtful to him that all of his children weren't at the Department of Children and Families when he went to see them that day and that he had not received any information from other sources, including the biological mother, **WILSON**, advising him of the death of Brittany. Moreover, he testified that he has not sought or received any counseling as a result of the death of Brittany and essentially attended five sessions of counseling with the Daniel Memorial counselor consisting of meetings set about 20 minutes each. [Deposition, p.28-30] That is the nature and extent of his injury, care and treatment and there are no other damages of any kind or sort related to this case.

5. Neither **WILSON** nor **HAMPTON** have testified or provided any information that they have suffered any economic damage whatsoever and there are no allegations (or proof) of willful and wanton conduct.

6. In light of the foregoing, it is clear that neither **WILSON** nor **HAMPTON** have suffered a legally significant physical impact or injury, and there is no evidence of any other grounds upon which to sustain a negligence action against **BOYS HOME** that is not barred by Florida's impact doctrine.

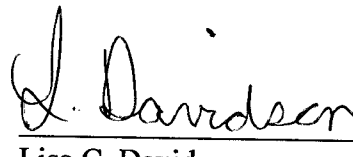
WHEREFORE, **BOYS HOME** respectfully requests entry of an order for Final Summary Judgment in its favor and against the plaintiffs in this action, and for such other relief as is justified.



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CERTIFICATE OF SERVICE

I certify that on the 23rd day of February, 2009, a true and correct copy of the foregoing was served by e-mail and U.S. mail on Helen W. Spohrer, Esq. at 701 West Adams Street, Suite 2, Jacksonville, FL 32204, Hugh Cotney at 233 East Bay Street, Suite 905, Jacksonville, FL 32202 and Maritza Pena, Esq./Joel Adler, Esq. at 4000 Ponce DeLeon Blvd., Suite 570, Coral Gables, FL 33146.



Lisa C. Davidson
Attorney for Defendant
Boys Home Association, Inc.

1 gone." And I just passed out, and I just boo boo
2 cried over the floor.

3 Q And she was with Daniel House? Do you
4 know who she was with?

5 A She was with her foster mother.

6 Q The woman that called you to tell you --

7 A Latonya Winn.

8 Q Right. Do you know who she was with?

9 A She say she's -- she say she a boss.

10 Q Okay. But do you know if it was with
11 Daniel House?

12 A Yes.

13 Q It was with Daniel House. Yes.

14 A Uh-huh (affirmative response).

15 Q Okay. And do you recall the dates? I
16 believe Brittany passed on a Friday. I believe
17 it was a Friday.

18 A It was the 17th.

19 Q And when were you -- how long did it
20 take for them to notify you?

21 A Okay. At that time, I was in class. My
22 first day of class with anger management was
23 November the 17th at one -- at the time, at one.

24 The report said that she died at 1:45
25 that evening. And I'm like, 1:45? Why haven't

1 Q Okay. All right. Have you been getting
2 any counseling from your church, from a pastor?

3 A Yes.

4 Q You have?

5 A Pastor Anthony Jackson.

6 Q Okay. So instead of receiving
7 counseling from Daniel House, which was offered
8 to you, you chose to go to your church.

9 A Uh-huh (affirmative response).

10 Q And your pastor has been helping you to
11 get through some of these issues.

12 A Yes, ma'am.

13 Q Okay. Do you meet with him on a regular
14 basis?

15 A I don't -- it's been a while that I has
16 been talking to him, because I've been busy, but
17 we talked good so far and he really helped me out
18 with a lot.

19 Q Okay. So you have had a couple of
20 sessions with him where you've talked with him,
21 but not on a consistent basis. You don't meet
22 with him every Tuesday and --

23 A Yes, ma'am.

24 Q Okay. But you have had some
25 conversations with your pastor?

1 Q Okay. All right. And you have been at
2 your current address, you said, for the past
3 year. Okay.

4 If you'll just give me a moment, I want
5 to review some notes.

6 A No problem.

7 Q Do you know if your children have ever
8 tested positive for drug use?

9 A My children?

10 Q Drugs or alcohol.

11 A No, ma'am. I didn't --

12 Q You don't know anything about that?

13 A (Witness shakes head.)

14 Q Let's talk about the actual incident
15 that led to Brittany's death and the foster care
16 parents' home.

17 Can you tell me about what you know
18 about how that -- that accident happened?

19 A All I know is that they said it was a
20 drowning. And complete details, from what I
21 read, other than that, I have no idea what all
22 really happened exactly.

23 Q Okay. How were you contacted?

24 A Mr. Adams (sic) came to my job, and he
25 said that he was taking me to visit my children,

1 because I haven't seen them since they had been
2 in foster care, and it was going to be my first
3 visit.

4 So he came and picked me up from my
5 job, and he didn't tell me that my daughter had
6 passed Friday. He came to my job that Monday. I
7 didn't know anything the whole weekend about
8 anything.

9 So when that Monday came, he came to me
10 and he was like, well, we're going to take you
11 down and see your children because we got a
12 family meeting with them. So I said okay.

13 So I got off work; he took me down; and
14 when I got down there, that's when they told me
15 my daughter had drowned that Friday. And I'm
16 like, you come to get me to take me -- to tell me
17 that you bringing me to see my children, but
18 didn't tell me that one of them had passed? And
19 it happened Friday and here it is a Monday.

20 Q Where is -- now, you're talking about a
21 Mr. Adams. Who is Mr. Adams?

22 A He works for Boys and -- for Daniel.

23 Q He worked for Daniel. Okay.

24 And where did he take you to meet with
25 your children?

1 last conversation with Ms. Wilson? I know you
2 said it was a bit tenuous in terms of trying to
3 meet the children at the home; that you saw them
4 at the home right around December (sic) 14th,
5 December 15th, and did you see her at that point?

6 A It was a week before.

7 Q So it was a week before Brittany passed
8 that you saw them --

9 A Yes, ma'am.

10 Q -- in the home. And you saw your -- and
11 you saw Ms. Wilson at the time.

12 And Ms. Wilson phoned you when DCF
13 removed the children from the home to have you
14 come over to take the children.

15 A To pick them up.

16 Q But, yet, Ms. Wilson didn't phone you
17 when Brittany had passed away, nor did any family
18 member?

19 A No, ma'am.

20 Q And you found out for the first time
21 through a representative at Daniel House --

22 A Yes, ma'am.

23 Q -- that your daughter had passed on --
24 basically two to three days later.

25 A Yes, ma'am.

1 Q Have you talked with anyone, other than
2 your attorneys, about the accident; you know, as
3 you said, Daniel House; anyone, other than -- I'm
4 not talking about, you know, your family members.

5 A As far as counseling?

6 Q I'm sorry; I didn't --

7 A As far as a counselor or something like
8 that?

9 Q Yes.

10 A No, ma'am.

11 Q Okay. So you have not sought any
12 counseling --

13 A Daniel sent me a counselor to me, and
14 she was more like just someone to talk to instead
15 of someone to try to help you along with it.

16 Q Uh-huh.

17 A So basically it was like I was just
18 talking it out with her more than just --

19 Q Right. Was this just one meeting?

20 A We did five.

21 Q So you did five sessions?

22 A (Witness nods head.)

23 Q Okay.

24 A She came to my job.

25 Q She came to your job. And how long were

1 those sessions? Did she spend your lunchtime
2 with you; spend an hour with you, or --

3 A About 20 minutes.

4 Q About 20 minutes or so on five different
5 occasions, and this was right after Brittany's
6 death.

7 A Yes, ma'am.

8 Q Okay. And you have not talked to anyone
9 from DCF or -- being the Department of Children &
10 Families, regarding the incident?

11 A No, ma'am.

12 Q And you have not talked to anybody from
13 Family Support Services regarding the incident?

14 A No, ma'am.

15 Q And you have not talked with anyone from
16 the Boys Home about the incident?

17 A No, ma'am.

18 Q The only one that you have talked to
19 about this incident is a representative from
20 Daniel House?

21 A Yes, ma'am.

22 Q Okay. Have you ever met Qiana Holmes,
23 the foster parent?

24 A No, ma'am.

25 Q No? So you didn't have any type of